STATE OF MICHIGAN

COURT OF APPEALS

RONNIE JEFFERY,

Plaintiff-Appellant,

v

SPEEDWAY SUPERAMERICA, L.L.C.,

Defendant-Appellee.

UNPUBLISHED
April 20, 2006

No. 259213
Genesee Circuit Court
LC No. 04-078161-NO

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the summary dismissal of his premises liability action. We affirm.

Plaintiff was injured when he fell while attempting to walk inside defendant's gas station to pay for some gas. He apparently claims that he fell because the sidewalk was cluttered which made it difficult to see that someone was exiting from the only operational door, just as he was approaching it, which caused him to jump back, encounter a height differential between the sidewalk and the parking lot, and slip and fall on ice and snow. In other words, that only one door was operational, the cluttered condition of the sidewalk, the height differential, and the snow and ice were the conditions that allegedly combined to cause his fall. Defendant was granted summary disposition on the ground that the allegedly dangerous conditions were open and obvious and no special aspects existed that made the conditions unreasonably dangerous.

On appeal, plaintiff first argues that defendant had actual or constructive notice of the allegedly dangerous condition. The trial court dismissed this matter on the ground that the condition was open and obvious and did not address the issue of notice; accordingly, we need not address this issue either. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Next, plaintiff argues that defendant was not entitled to the summary dismissal of this action because the conditions at issue were not open and obvious. After review de novo, considering the evidence in a light most favorable to plaintiff, we disagree. See MCR 2.116(C)(10); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Open and obvious dangers are those dangers that an average person of ordinary intelligence could reasonably be expected to discover upon casual inspection. See *Novotney v*

Burger King Corp (On Remand), 198 Mich App 470, 475; 499 NW2d 379 (1993). It is an objective test that focuses on whether a reasonable person in plaintiff's position would have foreseen the danger, not on whether a particular plaintiff should have foreseen the danger. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329; 683 NW2d 573 (2004).

Here, relying on *Lugo v Ameritech Corp, Inc*, 464 Mich 512; 629 NW2d 384 (2001), the trial court held that "the condition at that location was reasonably discoverable upon casual inspection. Objectively, a person of ordinary intelligence is aware of those items enumerated, the snow on the ground, displays on the sidewalk, doors that open and close." In his brief on appeal, plaintiff claims that the issue is "whether a combination of a cluttered sidewalk and a blocked store entrance . . . is open and obvious." Plaintiff proceeds to set forth an exhaustive analysis on open and obvious law, but fails to apply the law to the facts of his case. If he had, it would have been clear that the allegedly dangerous conditions were open and obvious. A "cluttered sidewalk" was reasonably discoverable, as was the "blocked store entrance," snow and ice, height differential between the sidewalk and parking lot, the customer exiting the store through the only operational door, and that door swinging open. We agree with the trial court that plaintiff failed to establish a genuine issue of material fact whether the allegedly dangerous conditions were open and obvious; accordingly, summary disposition was properly granted.

However, plaintiff argues, even if the conditions were open and obvious, a special aspect existed that caused an unreasonably dangerous situation. The special aspect was that the "cluttered sidewalk" was effectively the only means of ingress and egress to the store because the parking lot was covered with ice and snow. Again, we disagree. As the trial court concluded, so do we: "this configuration at that door and the sidewalk leading up to the door does not contain special aspects as contemplated by the Lugo decision, and . . . does not create a uniquely high likelihood of harm."

In his brief on appeal, plaintiff again sets forth an exhaustive analysis of the law regarding "special aspects" but failed to apply the law to his facts, except to claim in a conclusory manner that the above-noted special aspect existed. It is clear that, contrary to plaintiff's claim, the alleged conditions that caused his injuries were not "effectively unavoidable" and did not "impose an unreasonably high risk of severe harm." See *Lugo, supra* at 518. Thus, plaintiff has failed to establish that a genuine issue of material fact exists whether special aspects warrant an exception to the open and obvious doctrine. In sum, we conclude that the conditions that allegedly caused plaintiff's injuries were open and obvious, that no special aspects existed, and, therefore, the trial court properly granted summary disposition in defendant's favor.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald